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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

Interconnection between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

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Area Code Relief Plan for Dallas and)
Houston, Ordered by the Public Utility)
Commission of Texas)

NSD File No. 96-8

Administration of the North American)
Numbering Plan)

CC Docket No. 92-237

Proposed 708 Relief Plan and 630)
Numbering Plan Area Code by Ameritech-)
Illinois)

IAD File No. 94-102

To: The Commission

**REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION
OF COX COMMUNICATIONS, INC.**

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits this reply to
oppositions to Cox's petition for reconsideration of the Commission's *Second Report and
Order* in the above-referenced proceeding.^{1/}

^{1/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, *Second Report and Order and Memorandum Opinion and Order*, CC Docket No. 96-86, CC Docket No. 95-185, NSD File No. 96-8, CC Docket No. 92-237, IAD File No. 94-102. FCC 06 333, rel. Aug. 8, 1996 (the "*Second Report and Order*").

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Cox sought reconsideration of one issue crucial to the success of local exchange competition — the Commission's determination that "overlay" area codes may be used to relieve area code exhaust prior to the time that permanent number portability is implemented. As Cox and other parties have shown, the measures the Commission adopted to prevent the anti-competitive effects of area code overlays are insufficient to deter incumbent local exchange carrier ("LEC") abuse because interim portability and ten-digit dialing do not make up for the advantages conferred on incumbent LECs by their exclusive access to numbers from the original area code. The incumbent LECs oppose Cox's petition and urge the Commission to further weaken the competitive balance struck in the Commission's rules. The Commission should reject these efforts. Instead, the Commission should further strengthen competition by permitting implementation of area code overlays only after permanent number portability has been deployed in the geographic area covered by the overlay.

Effective safeguards against anti-competitive incumbent LEC behavior are crucial, particularly in the first few years of competition. Incumbent LECs have and will attempt to protect their market power, and can be counted upon to support the least competitive of regulatory regimes. Despite the passage of the 1996 Act the local exchange market remains essentially closed, and the records of many dockets are replete with examples of incumbent LEC abuses.^{2/} Nondiscriminatory access to numbering resources is essential to local exchange competition, as the Commission found in the *Second Report and Order*.

^{2/} See, e.g., Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service, *Reply Comments of Cox Communications, Inc.*, WT Docket No. 96-162 (filed October 24, 1996) at 4-5 (discussing evidence of LEC market power abuses filed in this docket).

Cox showed in its Petition that the safeguards the Commission adopted in the *Second Report and Order* are insufficient to protect nascent local exchange competition.^{3/} As MCI points out, without permanent number portability consumers will be reluctant to switch local exchange service providers if the switch involves a number assignment in an overlay numbering plan area ("NPA").^{4/} Incumbent carriers, by virtue of their ability to control the vast majority of NXX codes associated with the "old, desirable" area codes, will enjoy a huge competitive advantage over new entrants until permanent number portability is available.^{5/} Moreover, interim number portability measures, such as remote call forwarding, are not a realistic substitute for permanent portability because they prevent new entrants from offering service with the same features and functionalities offered by the incumbent LEC. For these reasons, many parties agree that permanent number portability must be a prerequisite for an NPA overlay plan.^{6/}

The principal opposition to requiring permanent portability comes from incumbent LECs, without regard to the arguments made by Cox and others.^{7/} For example, Bell Atlantic and others claim that Cox's Petition should be rejected because it presents "no new

^{3/} Cox Petition at 4-5.

^{4/} MCI Opposition at 8-9.

^{5/} See NCTA Opposition at 1-2 (citation omitted).

^{6/} See, e.g., AT&T Opposition at 15; Sprint Corporation Opposition at 7; MFS Opposition at 7; Teleport Opposition at 3.

^{7/} In some cases, incumbent LECs even urge the Commission to decrease its already insufficient safeguards. See, e.g., Bell Atlantic Opposition at 3 (asking the Commission to eliminate its ten-digit dialing requirement). Interestingly, at least one incumbent LEC, U S West, urges the Commission to retain its ten-digit dialing requirement. U S West Opposition at 12.

facts or arguments that the Commission has not already considered and rejected."^{8/} This is incorrect. In particular, since comments were filed last spring in the *Second Report and Order*, several recent consumer surveys have shown that business and residential telephone customers alike prefer area code splits to overlays, generally by wide margins, and Cox discussed these new surveys in its Petition.^{9/} For that matter, there is no requirement that new facts support a petition for reconsideration, as a cursory review of the Commission's own rules show.^{10/}

These oppositions also fail to come to grips with the most significant fact before the Commission on this issue: LEC claims that overlays are "consumer friendly" are contradicted by every sampling of customer opinion ever taken. Every single survey shows that, given the choice between a split or an overlay to relieve area code exhaust, consumers overwhelmingly choose a split.^{11/} Incumbent LECs appear unwilling to accept consumers' own assessment of the relative benefits of splits and overlays, even to the point of claiming

^{8/} Bell Atlantic Opposition at 5. *See also* Bell Atlantic NYNEX Mobile Opposition at 4; BellSouth Opposition at 1-2; Pacific Telesis Opposition at 2-3; U S West Opposition at 11.

^{9/} Cox Petition at 2-3.

^{10/} *See* 47 C.F.R. § 1.429(b). Paging Network, Inc., one of the country's largest paging operators, goes a step further than the LECs and claims, based on no authority, that area code splits are "consumer unfriendly" because "they mandate heavy expenses for existing customers in the printing of new stationary, business cards, advertising, vehicle identification and any other normal communication of a customer's phone number." Paging Network, Inc. Opposition at 5. Paging Network, Inc. cites no evidence that consumers agree with this proposition and fails to explain why the California surveys cited by Cox — and every other consumer survey to date — have shown diametrically opposite results.

^{11/} Cox Petition at 3 n.3.

that overlays are better for consumers than splits.^{12/} While the LECs, driven by their desire to limit competition, may choose to ignore the consumer interest, the Commission should not.

Some incumbent LECs, notably U S West, also attempt to minimize the competitive impact of overlays by claiming that "number portability will arrive shortly."^{13/} Despite the Commission's efforts to implement permanent portability, it is by no means certain that permanent portability will be available soon. In fact, U S West asked the Commission to extend the number portability mandates three months beyond the current deadlines soon after Cox filed its Petition.^{14/} New entrants obviously cannot count on a quick transition to permanent number portability. Indeed, GTE argues that the Commission should not mandate long-term number portability as a prerequisite for an area code overlay because permanent number portability "is not yet technically feasible."^{15/} Moreover, and as described above, the

^{12/} See, e.g., USTA Opposition at 3-4 (claiming that retention of existing telephone numbers makes overlays superior to splits). U S West takes this argument to a ridiculous extreme, claiming that customers will be confused if a "free" calling area is divided into different area codes by a split. See U S West Opposition at 11 n.17. As any resident of the Washington D.C. metropolitan area knows, it is possible for consumers to function quite well in an environment where up to three different area codes are included in one "free" calling area. Moreover, an overlay would have exactly the same effect by requiring consumers to dial two (or more) different area codes for local calls.

^{13/} See U S West Opposition at 11. In addition, U S West has filed suit in the United States Court of Claims arguing that the Commission's interim portability requirements constitute a taking.

^{14/} See Letter to William F. Caton, Acting Secretary, Federal Communications Commission from Robert H. Jackson, Executive Director - Federal Regulatory, U S West, CC Docket 95-116 at 6 (filed October 10, 1996).

^{15/} GTE Opposition at 12-13.

Commission cannot count on interim portability to fill the gap, given its acknowledged shortcomings in a competitive environment.^{16/}

In addition, requiring permanent portability would not prevent states from adopting overlays as Bell Atlantic NYNEX Mobile suggests.^{17/} Rather, states remain free to adopt overlays if they find them to be in the public interest, but only if the incumbent LEC provides permanent number portability. In effect, the only restriction on a state's ability to adopt an overlay would be the LEC's compliance with the Commission's rules.

Finally, Pacific Bell is simply wrong when it states that "[n]either Cox nor any other new entrant ever explains why our incentive to 'impose' overlays changes based on what kind of number portability is in effect."^{18/} The record shows that interim number portability decreases the competitive viability of new market entrants because it imposes higher costs for decreased functionality when compared with permanent number portability. Assigning less desirable telephone numbers to new entrants (such as numbers from an overlay area code) will exacerbate the impact of the absence of portability because it will leave new entrant customers with a choice between reduced functionality or new undesirable telephone numbers. Indeed, incumbent LECs continue to slow the implementation of permanent

^{16/} *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) at ¶ 104 (describing the disadvantages of interim portability mechanisms). In addition, some parties attack the Commission's ten-digit dialing requirement. *See, e.g.*, Bell Atlantic Opposition at 3; NYNEX Petition at 11-12. To the extent that this requirement is weakened in any way, the implementation of permanent portability prior to an overlay is even more critical.

^{17/} Bell Atlantic NYNEX Mobile Opposition at 1-2.

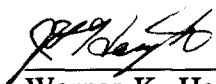
^{18/} Pacific Bell Opposition at 3 (footnote omitted).

number portability.^{19/} The Commission has the authority and the responsibility to adopt rules that deter such anti-competitive activity.

For all of these reasons, Cox respectfully requests that the Commission modify the rules adopted in the *Second Report and Order* in accordance with Cox's Petition.

Respectfully submitted,

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^{19/} In Georgia, for example, MCI has filed a complaint with the Georgia Public Service Commission in which it explains how BellSouth has been impeding progress toward permanent number portability. *See Complaint of MCI Requesting that the Commission Prohibit BellSouth From Initiating Any Services Which Will Interfere With the Deployment of Local Routing Number ("LRN") in Support of Local Number Portability ("LNP")*, Docket No. 5840-U, Before the Georgia Public Service Commission (filed November 7, 1996). *See also supra* note 14 and accompanying text.

CERTIFICATE OF SERVICE

I, Constance A. Randolph, a secretary at the law firm of Dow, Lohnes & Albertson, hereby certify that on December 2, 1996, I caused copies of the foregoing "Reply to Oppositions to Petition for Reconsideration of Cox Communications, Inc." to be served via U.S. first-class mail, postage prepaid, or hand delivery where indicated, to the following:

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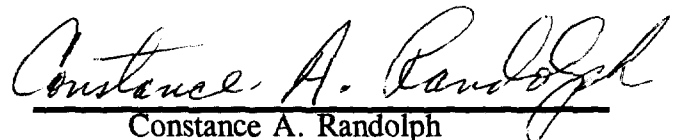
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